



WESTFIELD-WASHINGTON
BOARD OF ZONING APPEALS

October 15, 2013

1304-VU-04

Exhibit 1

Petition Number: 1304-VU-04

Subject Site Location: 817 E. 199th Street

Petitioner: Wesley's Landscape Inc.

Request: The petitioner is requesting a Variance of Use from the Westfield-Washington Township Zoning Ordinance to allow a landscaping business to be permitted in the Agriculture-Single Family (AG-SF1) District (WC 16.04.030.B.1).

Current Zoning: Agriculture Single-Family 1

Current Land Use: Commercial/Landscaping Business

Approximate Acreage: 2.9 acres

Exhibits:

1. Staff Report
2. Aerial Location Map
3. Application
4. Concept Plan

Staff Reviewer: Kevin M. Todd, AICP

Petition History

This petition is scheduled to receive a public hearing at the October 15, 2013 Board of Zoning Appeals (the "BZA") meeting.

Public Notice Procedures

The BZA's Rules of Procedure (the "Rules") require three (3) forms of public notice: mailing to neighbors, publication in the newspaper, and posting on the property (BZA Rules of Procedure, Article X). Each form of notice is required to be served at least ten (10) days before the hearing. State statute requires the newspaper notice procedures (Ind. Code § 36-7-4-920), while the Rules establish the mailing and sign posting requirements (BZA Rules of Procedure, Article X). The mailing was sent and the newspaper notice was published within the ten-day deadline. The sign was posted six (6) days before the hearing, and a suspension of this rule has been requested.



Because the signage requirement is a local rule, not a statutory rule, the BZA may suspend this requirement, if they choose. A suspension of the rules requires a unanimous vote of the members present at the hearing (BZA Rules of Procedure, Article XIII). Because the sign was posted almost a full week before the hearing, and because the other two forms of notice were served in accordance with the rules, staff supports suspending the posting notice requirement for this case.

Property Location and Project Description

The subject property is approximately three (3) acres in size and is located at 817 E. 199th Street (the "Property"). The Property is zoned Agriculture-Single Family 1 (AG-SF1). Large-lot single family residential lots are adjacent to the north. Agricultural/residential abuts the Property to the east, west and south. Portions of the proposed Chatham Hills PUD (located north of 199th Street) are not adjacent, but are nearby the Property.

The property is currently vacant, but the most-recent use of the Property was a landscaping business. According to the property owner, the site had been used this way for approximately 15 years. However, there is no evidence of the use pre-dating the institution of zoning in Westfield-Washington Township in 1977. Likewise, there is no evidence of (and no record of) previous variances or other zoning approvals being granted for the use of the property as a landscaping business. That use appears to have been in violation of Westfield's Zoning Ordinance.

The petitioner owns an existing Westfield landscaping business and is seeking to relocate his operation to this Property. As a result of the petitioner's due-diligence, staff learned of the previous zoning violation occurring on this site. The petitioner did not cause the violation. The City does not have any record of complaints and/or previous code enforcement action against this Property.

The petitioner is seeking proper zoning approval to conduct his landscaping business operation on this Property.

The Westfield-Washington Zoning Ordinance does not permit, by right, landscaping businesses in any zoning district.

The petitioner's proposal is to utilize all existing structures for his operation, as shown on the concept plan in Exhibit 4. The petitioner does not have plans for site modifications at this time.

Procedural

A Board of Zoning Appeals shall approve or deny variances of use from the terms of the zoning ordinance. The Board may impose reasonable conditions as a part of its approval. A variance may be approved under Ind. Code § 36-7-4-918.4 only upon a determination in writing that:



1. *The approval will not be injurious to the public health, safety, morals, and general welfare of the community:*

Finding: It is unlikely that allowing a landscaping business to locate on the Property would be injurious to the public health, safety, morals, and general welfare of the community. The Property has been used in this manner for approximately 15 years without a recorded complaint.

2. *The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner:*

Finding: It is unlikely that the use and value of adjacent property will be affected in a substantially adverse manner. The proposed use would continue a use that has been occurring on the Property for approximately 15 years. Feedback from adjacent property owners should provide insight regarding the impact on adjacent properties.

3. *The need for the variance of use arises from some condition particular to the property involved:*

Finding: The proposed use is not contemplated by the Westfield-Washington Zoning ordinance and a variance is needed to allow the use anywhere in the township.

4. *The strict application of the terms of the zoning ordinance will constitute an unnecessary hardship if applied to the property for which the variance of use is sought:*

Finding: Strictly applying the zoning ordinance would not permit the requested use. The proposed use is not contemplated by the Westfield-Washington Zoning ordinance and a variance is needed to allow the use anywhere in the township. The BZA should determine whether or not the inability to use the property for the Proposed Use is an unnecessary hardship in the use of the Property.

5. *The approval does not interfere substantially with the comprehensive plan:*

Finding: The Westfield-Washington Comprehensive Plan (the "Comprehensive Plan") includes this area in the New Suburban Residential area. As water and sewer infrastructure becomes available, it is anticipated that new residential development will occur in this area of the township.



Recommendations

- A. Staff recommends approving the public notice rule suspension request, reducing the number of days that posting on the property is required from ten (10) days to six (6) days.

If the Board approves the Rules suspension request, then they may act on the variance request.

- B. If the Board finds that: 1) the use and value of neighboring property will not be adversely affected by allowing the proposed use; 2) the zoning ordinance creates an unnecessary hardship in the use of the Property; and 3) the proposed use does not substantially interfere with the Comprehensive Plan, then approve 1304-VU-04 based on the findings of this report, with the following conditions:
1. That all outdoor activity and storage of equipment and materials occur behind the front setback line;
 2. That all outdoor activity and storage of equipment and materials be screened from view from adjacent right-of-way;
 3. That all signage follow the requirements found in WC 16.08.010, except that monument signage shall be prohibited on this Property; and,
 4. That the Petitioner records an Acknowledgement of Variance with the Hamilton County Recorder's Office and returns a copy of the recorded instrument to the Economic and Community Development Department prior to occupying the Property.